Kejutaan Holdings Sdn Bhd v Magnum 4D (Perak) Sdn Bhd & Ors

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02-320 OF 2008
GOPAL SRI RAM FCJ, AHMAD MAAROP AND KANG HWEE GEE JJCA
26 MAY 2009

Companies and Corporations — Members' rights — Oppression — Unsuccessful petition to High Court under s 181 of the Companies Act 1965 — Appeal against High Court decision — Whether there was oppression leveled against appellant

The appellant was a minority shareholder of Magnum 4D (Perak) Sdn Bhd, the first respondent. The second respondent, a majority shareholder of the first respondent was solely controlled by the eighth respondent while the ninth respondent, a public listed company, was a majority shareholder of the eighth respondent. The fourth to seventh respondents were at all material times the directors of the first respondent. The ninth respondent, which was licensed to conduct gaming business throughout Malaysia, entered into an agreement ('the area agency agreement') with the first respondent and appointed the latter as its area agent in the state of Perak. The area agency agreement set out the terms of the business and the commission payable to the area agent. The area agents then appointed selling agents and they had agreements with each of them as to the payment of commission. In 2002, a dispute arose between a selling agent in Selangor and the area agent for that state as to the amount of commission payable. That dispute was referred to an arbitrator who found for the selling agent. The arbitrator's award in that case had far-reaching effects in that it decided that all selling agents in each state would have recourse against the respective area agents. As this would have exposed the first respondent to a potential claim of about RM18m, the ninth respondent acted promptly to insulate the first respondent from potential suits by the selling agents in Perak. The ninth respondent acting through its subsidiaries encouraged the selling agents to move away from the first respondent and enter into fresh agreements with a company called French Development Sdn Bhd ('Newco'), by offering the selling agents a higher rate of commission then that prescribed by the agreement they had with the first respondent. As it happened, all the selling agents agreed to this course of action and the core business of the first respondent ceased to exist. The appellants as minority shareholders alleged that they were victims of oppression and petitioned the High Court for relief under s 181 of the Companies Act 1965 ('the Act'). The High Court found that there was no

oppression and hence the present appeal. In their appeal the appellants relied on the following three grounds as constituting oppression: (i) that the fourth to seventh respondents as directors of the first respondent had acted in breach of the duties, which they owed to minority shareholders, when they failed to disclose to the appellants the fact that the first respondent may have had a potential claim against the ninth respondent; (ii) that the first respondent's core business was taken away from it and handed to Newco with the intention of leaving the company useless to the appellants; and (iii) that the ninth respondent had terminated the long-standing agency agreement it had with the first respondent without cause. The main issue in this appeal was whether based on the totality of the evidence presented to the High Court a reasonable tribunal would find that there was oppression leveled against the appellant.

Held, dismissing the appeal with costs:

(1) The area agency agreement was a perfectly valid agreement which was not in itself an act of oppression. The agreement was always there to be enforced. It was never a term of that area agency agreement that the commission payable to the ninth respondent could be reduced to 4% by an external act. The only circumstance in which the rate of commission could be altered is as provided by cl 11 of the agreement itself and that too at the instance of the ninth respondent acting unilaterally. Therefore to suggest that the arbitration award had any impact on the rate of commission payable by the first respondent to the ninth respondent was a non sequitur (see paras 7 & 8)

(2) Further, if a limited company enters into a transaction which constitutes oppression upon one or more of its members, then upon proof of oppression by the complainants, the court is empowered by the Act to intervene and cancel the transaction that is found to be oppressive. But that is not the case here. Thus there was no duty upon any of the directors of the first respondent or even the ninth respondent to advise the appellants of any potential claim that the first respondent had against the ninth respondent (see para 8).

(3) The arbitration award gave rise to a set of circumstances that left the first respondent liable to possible suits. It thus became necessary to insulate the interests of the shareholders from a serious loss of the capital fund of the first respondent. There was no malicious intent on the part of the ninth defendant to denude the first respondent of its business. As long as the respondents acted bona fide and in the interests of the first respondent and its shareholders, commercial decisions of this nature were well beyond the court's purview. It was clear that the steps

taken by the ninth respondent, in particular, were with the object of protecting the interests of the first respondent and its shareholders (see paras 11 & 12).

(4) The termination of the long-standing agency agreement the ninth respondent had with the first respondent was a mere consequence of the restructure that had been set in motion to completely insulate the first respondent from possible suits. In a case of this sort, one had to look at the evidence as a whole and not in isolation. Further, what the appellant wanted was a reduction of the commission payable to the ninth respondent, which was a revisit of cl 11 of the area agency agreement, and this would amount to a violation of the terms of the agreement (see para 13).

[Bahasa Malaysia summary

Perayu merupakan pemegang saham minoriti Magnum 4D (Perak) Sdn Bhd, responden pertama. Responden kedua, pemegang saham majoriti responden pertama dikawal sepenuhnya oleh responden kelapan manakala responden kesembilan, sebuah syarikat senarai awam, merupakan pemegang saham majoriti responden kelapan. Responden-responden keempat hingga ketujuh pada setiap masa matan merupakan pengarah-pengarah responden pertama. Responden kesembilan, yang diberikan lesen untuk mengendalikan perniagaan perjudian di seluruh Malaysia, telah memasuki perjanjian ('perjanjian agensi kawasan') dengan responden pertama dan melantik responden pertama sebagai ejen kawasan di negeri Perak. Perjanjian agensi kawasan itu menetapkan syarat-syarat perniagaan dan komisen yang perlu dibayar kepada ejen kawasan. Ejen-ejen kawasan kemudian telah melantik ejen-ejen jualan dan mereka masing-masing telah bersetuju terhadap bayaran komisen itu. Dalam tahun 2002, pertikaian telah timbul antara ejen jualan di Selangor dan ejen kawasan untuk negeri itu berhubung jumlah komisen yang perlu dibayar. Pertikaian tersebut telah dirujuk kepada penimbangtara yang telah menyebelahi ejen jualan. Award penimbangtara dalam kes tersebut mempunyai pengaruh yang meluas yang mana ia telah memutuskan bahawa semua ejen-ejen jualan dalam setiap negeri hendaklah bertindak terhadap ejen-ejen kawasan masing-masing. Oleh kerana ini akan mendedahkan responden pertama kepada tuntutan yang berpotensi sejumlah lebih kurang RM18 juta, responden kesembilan telah bertindak dengan segera untuk melindungi responden pertama daripada guaman-guaman berpotensi oleh ejen-ejen jualan di Perak. Responden kesembilan telah bertindak melalui subsidiari-subsidiarinya menggalakkan ejen-ejen jualan untuk beralih daripada responden pertama dan memasuki perjanjian-perjanjian baru dengan syarikat yang dikenali sebagai French Development Sdn Bhd ('Newco'), dengan menawarkan ejen-ejen jualan komisen yang lebih tinggi daripada apa yang ditetapkan oleh perjanjian mereka dengan responden pertama. Kebetulan, semua ejen-ejen jualan telah bersetuju dengan jalan

tindakan ini dan teras perniagaan responden pertama tidak wujud lagi. Perayu-perayu sebagai pemegang-pemegang minoriti telah mendakwa bahawa mereka adalah mangsa penindasan dan telah mengemukakan petisyen untuk relief ke Mahkamah Tinggi di bawah s 181 Akta Syarikat 1965 ('Akta'). Mahkamah Tinggi mendapati bahawa tidak ada penindasan dan justeru itu rayuan ini dikemukakan. Dalam rayuan mereka perayu-perayu bergantung kepada tiga alasan berikut sebagai membentuk penindasan: (i) bahawa responden-responden keempat hingga ketujuh sebagai pengarah-pengarah responden pertama telah bertindak melanggar kewajipan, yang mereka patut laksanakan terhadap pemegang-pemegang minoriti, apabila mereka gagal untuk mendedahkan kepada perayu-perayu fakta bahawa responden pertama mungkin mempunyai tuntutan berpotensi terhadap responden kesembilan; (ii) bahawa teras perniagaan responden pertama telah dirampas daripadanya dan diserahkan kepada Newco dengan niat menjadikan syarikat tidak berguna kepada perayu-perayu; dan (iii) bahawa responden kesembilan telah menamatkan perjanjian agensi yang lama antaranya dengan responden pertama tanpa sebab. Isu utama dalam rayuan ini adalah sama ada berdasarkan keseluruhan keterangan yang dikemukakan ke Mahkamah Tinggi tribunal yang munasabah akan mendapati bahawa terdapat penindasan berlaku terhadap perayu.

Diputuskan, menolak rayuan dengan kos:

(1) Perjanjian agensi kawasan adalah perjanjian yang betul-betul sah yang mana bukan dengan sendirinya tindakan penindasan. Perjanjian itu sentiasa dalam keadaan boleh dikuatkuasakan. Tiada syarat dalam perjanjian agensi kawasan itu bahawa komisen yang perlu dibayar itu akan dikurangkan kepada 4% melalui tindakan luaran. Satu-satunya keadaan di mana kadar komisen boleh ditukarkan adalah seperti yang diperuntukkan oleh fasal 11 perjanjian itu sendiri dan itu juga atas permintaan responden kesembilan bertindak secara satu pihak. Oleh itu untuk mencadangkan bahawa award penimbangtara mempunyai apa-apa kesan ke atas kadar komisen yang perlu dibayar oleh responden pertama hingga responden kesembilan adalah *non sequitur* (lihat perenggan 7 & 8).

(2) Selanjutnya, jika syarikat berhad memasuki transaksi yang membentuk penindasan ke atas satu atau lebih ahli-ahlinya, maka jika terdapat bukti penindasan melalui aduan, mahkamah mempunyai kuasa melalui Akta untuk campur tangan dan membatalkan transaksi yang didapati bersifat menindas itu. Namun di sini bukan kes sebegitu. Oleh itu tiada kewajipan ke atas mana-mana pengarah responden pertama mahupun responden kesembilan untuk menasihatkan perayu-perayu tentang tuntutan berpotensi responden pertama terhadap responden kesembilan (lihat perenggan 8).

A (3) Award penimbangtara telah mewujudkan set keadaan yang telah menjadikan responden pertama bertanggungjawab terhadap guaman-guaman yang berkemungkinan. Oleh itu adalah perlu untuk melindungi kepentingan-kepentingan pemegang-pemegang saham daripada kerugian dana modal yang serius responden pertama. Tiada B niat jahat di pihak defendan kesembilan untuk memusnahkan perniagaan responden pertama. Selagi responden-responden bertindak bona fide dan demi kepentingan responden pertama dan pemegang-pemegang sahamnya, keputusan-keputusan komersial yang bersifat sedemikian adalah melampaui skop mahkamah. Jelas C langkah-langkah yang diambil oleh responden kesembilan, khususnya, adalah dengan tujuan untuk melindungi kepentingan-kepentingan responden pertama dan pemegang-pemegang sahamnya (lihat perenggan 11 & 12).

D (4) Penamatan perjanjian agensi yang lama yang terdapat antara responden kesembilan dan responden pertama hanyalah akibat penyusunan semula yang dilaksanakan untuk melindungi sepenuhnya responden pertama daripada guaman-guaman yang berkemungkinan. Dalam kes sebegini, seseorang perlu melihat keterangan secara menyeluruh dan E bukan secara berasingan. Selanjutnya, apa yang perayu inginkan adalah pengurangan daripada komisen yang perlu dibayar kepada responden kesembilan, yang merupakan semakan semula fasal 11 perjanjian agensi kawasan, dan ini merupakan pelanggaran syarat-syarat perjanjian (lihat perenggan 13).]

F **Notes**

For cases on oppression, see 3(1) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 496–543.

G **Cases referred to**

Kong Thai Sawmill (Miri) Sdn Bhd, Re [1978] 2 MLJ 227, PC (refd)
Scottish Co-operative Wholesale Society Ltd v Meyer [1959] AC 324, HL (distd)
Tivoli Freeholds Ltd, Re [1972] VR 445 (refd)

H **Legislation referred to**

Companies Act 1965 s 181

Appeal from: Originating Petition No D5–26–39–2004 (High Court, Kuala Lumpur)

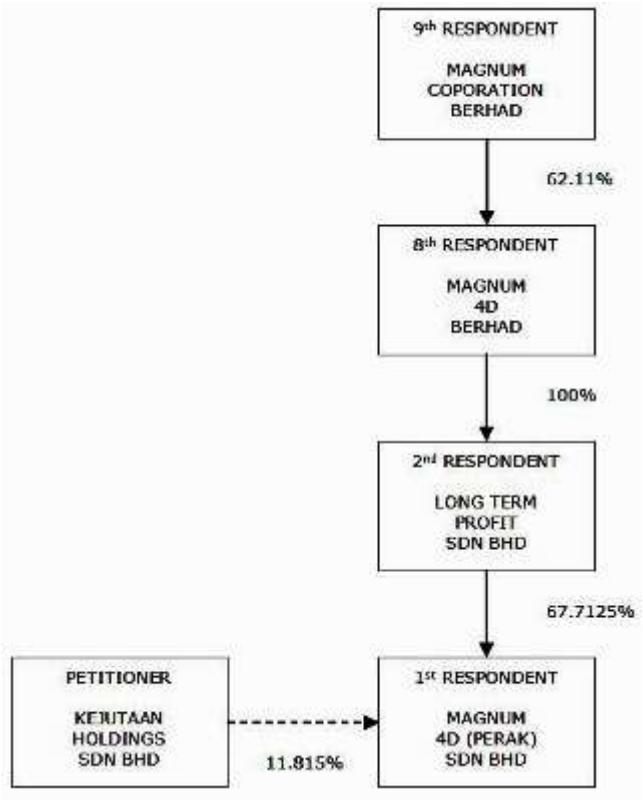
I *WSW Davidson (Wan Koon Meng and Y Ramachandran with him) (Azman Davidson & Co) for the appellants.*
Logan Sabapathy (Liew Pui Yee and Chay Chee Yon with him) (Logan Sabapathy & Co) for the second and eighth respondents.
S Nantha Balan (Norliza bt Rasool Khan with him) (Zul Rafique & Partners) for the fourth to seventh respondents.

Cyrus Das (K Mohan and Navrita Kaur with him) (Shook Lin & Bok) for the ninth respondent.
Lim Chee Wee (Ravneet Kaur with him) (Skrine) for the tenth respondent.

Gopal Sri Ram FCJ (delivering judgment of the court):

[1] This is the judgment of the court.

[2] This appeal concerns a dispute between the shareholders of a company. The appellant's case is that it is the victim of conduct proscribed by s 181 of the Companies Act 1965 ('the Act'). It unsuccessfully petitioned the High Court for relief under that section. It has now appealed to us. Before we narrate the facts relevant to the dispute, it is necessary to introduce the parties to these proceedings and describe how they are related to each other. Learned counsel for the appellant has put it in the form of a chart which we gratefully produce below.



A [3] The appellant is a minority shareholder of Magnum 4D (Perak) Sdn Bhd, the first respondent before us, which is merely a pro-forma party to these proceedings and is not represented. The second respondent is the majority shareholder of the first respondent. It in turn is solely controlled by the eighth respondent. The ninth respondent is a majority shareholder of the B eighth respondent. There are other minority shareholders in the first respondent, but they are not before us. The fourth, fifth, sixth and seventh respondents are directors of the first respondent. As for the tenth respondent, it is alleged that he is a shadow director of the first respondent. But it must be said at once that no material was placed before the High Court to support C that charge and learned counsel for the appellant quite frankly did not pursue the point before us.

[4] The ninth respondent is a public-listed company. It is licensed to conduct gaming business throughout Malaysia. It is authorised to do this D through agents. It appoints area agents: usually one area agent for each state. It enters into agreements with these area agents on the conduct of business and in respect of the commissions that they must pay it. The area agents then appoint selling agents and they have agreements with each of them as to the payment of commission. There is a formula. But it is not relevant for present E purposes. The first respondent is an area agent. It conducts business in the State of Perak. It has an agreement with the ninth respondent. It is dated 21 April 1989 ('the area agency agreement'). Clause 11 of that agreement is important. This is what it says:

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> 11. COMMISSION
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> The Area Agent shall, subject to Clause 10, be entitled to retain seventy-three per centum (73%) of the net collection arising from the sale of Four-Digit Numbers Forecast tickets in the Area. The amount so retained G by the Area Agent shall be used for the payment of prizes, telecommunications costs, materials provided in connection with the Ticketing Equipment commission of its Selling Agents and remuneration of its employees and all other expenses incurred in respect of the sale and operation of the Four-Digit Numbers Forecast betting in the Area and any balance thereof shall be deemed to be the consideration to the Area Agent H for organizing the operation of Four-Digit Numbers Forecast betting in the Area. It is expressly agreed and provided that in the event of the said seventy-three per centum (73%) of the net collections being insufficient to pay the prizes, commissions, remunerations and other expenses of the Area Agent and its Selling Agents then the Area Agent shall pay the deficit sum I out of its own funds and bear such loss. The Area Agent shall not be entitled in any event to claim such deficit or loss or any remuneration from the Licensee. The Area Agent shall account to the Licensee for all other monies in excess of the seventy-three (73%) per centum of the net collection arising from the sale of Four-Digit Numbers Forecast tickets. It is further expressly agreed and provided that the percentage of the collection from the sale of

Four-Digit Numbers Forecast tickets payable by the Licensee to the Area Agent aforesaid may at the absolute discretion of the Licensee be varied from time to time but in such event the Licensee shall give at least one (1) month's notice of such variation to the Area Agent before the variation shall become effective.

The expression 'net collection' shall mean the gross proceeds from the sale of tickets in the Area (subject to Clause 10) less the Gaming Tax imposed under the Gaming Tax Act (or any amendment or re-enactment thereof) in respect of Four-Digit Numbers Forecast.

[5] Everything appears to have gone on quite well for 10 years. Then in 2002, a dispute arose between a selling agent in Selangor and the area agent for that state. It had to do with the amount of commission payable. That dispute was referred to an arbitrator. He handed down an award on 16 August 2002. He found for the selling agent. If it had been merely an interpretation of the agreement between the area agent and the selling agent, nothing perhaps would have come of it. But as it happened, the arbitrator without there being any representation before him by the ninth respondent, proceeded to interpret cl 11 of the area agency agreement. The impact of the award was far-reaching. What the arbitrator appears to have held is that, having regard to the rate of the pool betting duty, the ninth respondent was only entitled to 4% commission. That of course was quite wrong, because the area agency agreement which had remained unchallenged for more than 10 years specifically provided for the commissions to be paid at the rate prescribed in cl 11 earlier reproduced. Following the publication of the award, an extraordinary general meeting of the first respondent was called for. It was held on 24 June 2003. At that meeting, a letter dated 3 June 2003 from the ninth respondent to the first respondent was presented for discussion. The aim and object of the meeting was to reaffirm the percentage of commission payable according to cl 11. All present at the meeting save for one minority shareholder who is not before us assented to the passing of the resolutions. The resolutions are in the following terms:

1. That it is the Company's position that the award against a State counterpart whereby it was ruled that the commission due to MCB is only 4% of net collection is not reflective of the true position between MCB and the Company.
2. That the Company confirms the true position and that the said commission is presently 25.43% from the net collection notwithstanding that the Pool Betting Duty rate was reduced from 12% to 6% with effect from 1st January 2003 and that the Agreement is restated accordingly (if at all necessary).
3. That without prejudice to any other necessary action to preserve a position

as set out above, the Company shall correct the misconception amongst selling agents, both in writing and through meetings.

4. That Tan Sri Dato' Md Khir Johari and/or Mr. Tuen Foo Fat be and given full mandate to carry out the decisions of the General Meeting and all matters necessary and incidental thereto.

[6] As we have said, the impact of the arbitrator's award appears to have been quite far reaching. If he was right, then all selling agents in each state would have recourse against the respective area agents. That would expose the first respondent to a potential claim of about RM18m. The ninth respondent was naturally concerned. Steps had to be taken, within reasonable limits, to insulate the first respondent from potential suits by the selling agents in Perak. Simultaneously, these selling agents had to be appeased and releases obtained from each of them waiving any claim they may have against the first respondent. And all this had to be done fairly quickly. Now, there is a company called French Development Sdn Bhd. It was a shell company at the material time. We will refer to it as 'Newco', because that is how parties before us have referred to it. What happened was this. The selling agents in Perak were offered a higher rate of commission than that prescribed by the agreement they had with the first respondent. Separate deeds of mutual revocation and release were executed by them. But there was no assurance at the time that all the selling agents would agree to the course proposed. Some might object and insist on pursuing a claim against the first respondent. To meet this difficulty, the ninth respondent acting through its subsidiaries encouraged the selling agents to move away from the first respondent and enter into fresh arrangements with Newco. As it happened, all the selling agents agreed to the course proposed. The core business of the first respondent ceased to exist. The ninth respondent then terminated the area agency agreement it had with the first respondent. During this period of time, discussions took place between the ninth respondent's subsidiaries and the petitioner. These included proposals from the ninth respondent and/or its subsidiaries to buy out the petitioner's shares in the first respondent. However nothing came out of this. Later, on 14 May 2004 the appellant presented this petition seeking relief on the ground that it had been oppressed by the second to tenth respondents.

[7] Three grounds of complaint were put forward as constituting oppression. First, that the fourth, fifth, sixth and seventh respondents being directors of the first respondent had failed to disclose to the meeting of 24 June 2003 of the potential claim that the first respondent may have had against the ninth respondent in respect of overpayment of commission. The argument here is that as a result of the award of 16 August 2002, it was found that the first respondent had overpaid sums by way of commission to the ninth respondent. The first respondent was entitled to recover these monies.

The directors (the fourth, fifth, sixth and seventh respondents) were under a duty to advise the meeting, in particular the minority shareholders present thereat, of this claim. They did not do so. Accordingly, they had acted in breach of the duties which they owed the minority shareholders.

[8] Now, we have heard very careful arguments advanced on this point before us for the best part of two days. And we are grateful to Dato' WSW Davidson of counsel for the appellant for having explained his client's case in very clear terms. However after anxious consideration, we are satisfied beyond any doubt that there is really nothing in this point. The area agency agreement is a perfectly valid document. During argument, we asked learned counsel for the appellant whether it is their case that the area agency agreement in question was in itself an act of oppression or that it had been used as an instrument of oppression. He quite frankly said that that was not his case. So the agreement was always there to be enforced. And it was never a term of that area agency agreement that the commission could be reduced to 4% by an external act, that is to say, an event dehors the contract. The only circumstance in which the rate of commission could be altered is provided by cl 11 itself. And that is at the instance of the ninth respondent acting unilaterally. In our respectful view, to suggest that the award of 16 August 2002 had any impact on the rate of commission payable by the first respondent to the ninth respondent is a non sequitur. It is a well-established principle sanctioned by the doctrine of sanctity of contract that parties who make agreements must adhere to their terms. The law does not permit excuse from performance save in very rare instances. There is no power in any court to interfere with contractual relations lawfully established or to cancel obligations voluntarily assumed. Where, however, a limited company enters into a transaction which constitutes oppression upon one or more of its members, those making complaint may upon proof of oppression seek a cancellation or a setting aside of the transaction in question. The court is empowered by statute, that is to say, the Act, in those circumstances to intervene and cancel the transaction that is found to be oppressive. But that is not the case here. We accordingly hold that there was no duty upon any of the directors of the first respondent or indeed upon the ninth respondent to advise the shareholders of the first respondent in the way in which it is said they ought to have been advised.

[9] The second ground upon which oppression is said to have taken place is this. The first respondent's core business was the conduct of gaming activity through its selling agents. That was taken away from it and handed to Newco. In short, the first respondent was left to starve. It became a shell and utterly useless to its shareholders, in particular the appellant. Reliance was placed on the decision of the House of Lords in the leading case of *Scottish Co-operative*

A *Wholesale Society Ltd v Meyer* [1959] AC 324. In that case, Viscount Simonds observed, which observation is to be found in the headnote of the case, as follows:

> When a subsidiary company is formed with an independent minority of
B shareholders, the parent company is under an obligation so to conduct its own affairs as to deal fairly with its subsidiary.

In the course of his speech, Viscount Simonds described the conduct of the directors of the holding company in caustic terms. He said that the holding
C company had 'doomed the company to destruction' and 'was ruthless and unscrupulous in design'.

[10] No doubt *Scottish Co-operative Wholesale Society Ltd v Meyer* is authority for the proposition that a holding company is under an obligation
D to conduct the affairs of its subsidiary having independent minority shareholders in a fair manner. But whether there has been a departure from fairness or, to borrow the language of Lord Wilberforce in *Re Kong Thai Sawmill (Miri) Sdn Bhd* [1978] 2 MLJ 227, 'a visible departure from the standards of fair dealing and a violation of the conditions of fair play which
E a shareholder was entitled to expect' is a matter that depends on the peculiar facts and circumstances of each case. This is an area in which decided cases provide broad guidelines only with a high degree of fact sensitivity: see *Re Tivoli Freeholds Ltd* [1972] VR 445. To attempt a comparison of two fact patterns is neither helpful nor conclusive.

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[11] That brings us to the facts of the present instance. As we have already said, the arbitration award of 16 August 2002 set the cat among the pigeons. As a matter of commercial reality, the first respondent had to be protected from possible suits. It was necessary to insulate the interests of the
G shareholders from a serious loss of the capital fund of the first respondent. The events show that everyone acted in panic. Looking at the circumstances outlined by learned counsel for the appellant not individually but as part of a continuing story, it is clear that there was no malicious intent on the part of the ninth respondent to denude the first respondent of its business. In
H short, the kind of conduct which the House of Lords frowned upon in the *Scottish Co-operative* case is absent here. What appears to have been uppermost in the minds of the relevant respondents is to ensure that the selling agents were dealt with in a reasonable way so as to avert possible litigation. Learned counsel for the appellant argued that the stated purpose
I for the formation of Newco and the migration of the agents to it was nothing more than a lame excuse. The ninth respondent and those associated with it could easily enough have continued with the core business of the first respondent whilst dealing with the selling agents in the manner in which they were dealt with. There was no need to have the business conducted through

Newco at all. On hindsight that might well appear to be a reasonable suggestion. But one must recall the reality of the situation that faced the relevant respondents in the aftermath of the award of 16 August 2002. Simultaneous steps had to be taken and parallel courses of action had to be run. There was, as we have already said, no assurance that all the selling agents would agree to waive any claim they may have had. At the same time, those agents that did agree had to be accommodated on new terms. It was a matter of pure commercial judgment well within the province of the concerned respondents. So long as they acted bona fide and in the interests of the first respondent and its shareholders, commercial decisions of this nature are well beyond the court's purview. And of this we are quite satisfied, that the steps taken by the relevant respondents, in particular the ninth respondent, were with the object of protecting the interests of the first respondent and its shareholders.

[12] We may add here two matters which we consider relevant. First, there is an admitted fact that the shareholders in the first respondent were offered shares in Newco. The appellant declined to take up the offer. Second, there is the offer to buy out the appellant. Now this conduct taken together with all the other relevant facts and circumstances points to an intention not to harm the first respondent or its shareholders.

[13] The third ground of complaint as constituting an act of oppression is the fact that the ninth respondent terminated the long-standing area agency agreement it had with the first respondent. The submission here is that the agreement was not terminable save for cause. Here, no cause had been provided as the first respondent had at no time acted in breach of the agreement in question. Now there are two answers to this submission. The first is provided by the facts and circumstances already adumbrated that followed hotfoot upon the arbitration award of 16 August 2002. No useful purpose will be served by repeating them here. Once Newco had been established and the first respondent completely insulated, the purpose of the area agency agreement ceased to exist. Its termination was a mere consequence of the restructure that had already been set in motion following the extraordinary general meeting of 24 June 2003. In a case of this sort, one has to look at the evidence in the round and not in isolation. Second, it is not quite correct to say that the first respondent was not acting in breach of the area agency agreement. To recall, the commission payable under that agreement was 27%. The appellant wanted it reduced to 4% per cent and wanted the first respondent to recover the balance in the hands of the ninth respondent. The court's sanction to do all this was being sought by way of the petition presented in this case. So, in reality, what the appellant wanted was a revisit of cl 11 by the first respondent. That would, in our respectful view, amount to a violation of the terms of the area agency agreement.

[14] The real issue in this appeal is whether, based on the totality of the evidence presented to the High Court, a reasonable tribunal properly directing itself would have concluded that there was oppression or rather oppressive conduct leveled against the appellant. That question we would answer in the negative. In our judgment, the case put forward by the appellant in the court below fell far short of the standard required by the authorities to which we have already referred. In these circumstances, we find ourselves in agreement with the High Court in the orders that it made. The appeal is accordingly dismissed. The appellant must pay the costs of the respondents incurred in this court. The orders of the High Court are affirmed. The deposit in court shall be paid out to the second and eighth respondent to account of their taxed costs. Each party shall be entitled to present its separate bill for taxation and each bill shall admit of a separate item for getting-up.

Appeal dismissed with costs.

Reported by Kohila Nesan